

“Passport Trade”: A Vicious Cycle of Nonsense in the Netherlands

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“How can you justify the fact that your work was translated into Russian? This goes against the claim that you engage in academic work. Is Russian not the language of billionaires interested in getting another citizenship?” Following the persistent repetition of this question by a four-person independent investigation committee installed by my home University, my lawyer, seeing that I have no words – indeed, am unable to speak – asks for a break and leads me out of the room. We sit on the steps in front of the beautiful Academy building. This is Groningen, January 2020, I am a Dutch professor of European Constitutional Law and Citizenship here and Russian is my mother tongue.

The goal of the investigation was to establish my role in the “controversial passport trade” of the Maltese government in reaction to accusations leveled by Dutch television and politicians in a persistent media attack (see “Journalism” below). In a convoluted report of almost 100 pages with annexes (analysed in my [Naschrift](#)) the independent investigation committee finally concluded that “Prof. Kochenov gave no advice concerning whether some individuals could obtain Maltese passports. The legal advice he gave dealt exclusively with the elements of the Maltese legal system and the Individual Investor Programme in relation to EU law.” Moreover, “there is no evidence that Prof. Kochenov’s academic work was influenced by the honorariums he received.”

I stand fully exonerated from the allegations of “the passport trade.”

“Passport Trade”

There is one problem with this finding however: the “passport trade” does not exist outside of the clandestine [Pacific markets](#) or the [criminal circles](#) faking official documents. By contrast, acquiring residence and/or citizenship in strict compliance with national and European law in exchange for investment is something quite different. While the absolute majority of EU governments promote the latter, not a single government in the EU has ever officially engaged in the former. There is an abyss separating legal work on investment migration and criminal “passport trade”. The finding by the independent investigation committee, which did not include a single expert on citizenship, naturalization, or residence law, is thus entirely meaningless, even before you begin to work back through its tortuous reasoning. It was bound to be so unless someone is actually accused of corruption or acquiring travel documents by illegal means. The latter was not the case here. By blurring the lines between clandestine criminal operations and best practice in naturalization law, “passport trade” has been persistently used by Dutch politicians and journalists, opposed to investment migration and dual citizenship. In other words: a Professor

was blamed for sharing his expertise in citizenship in Union law, which some local politicians in the Netherlands misunderstand and happen to dislike. Fully legal mainstream practice was, quite absurdly, presented as criminal.

As opposed to “passport trade”, investment migration – which is achieved through the acquisition of citizenship by investment (CBI) or residence by investment (RBI, often eventually leading to citizenship) – is a completely legal practice, which is widespread in the European Union (EU). In a world where states themselves decide on who their citizens are (1930 Hague Convention, Art. 1), cashing in on rich foreigners coming from the countries issuing [low-quality citizenships](#) is an [attractive prospect](#). It is not surprising that the rich are more than ready to pay a lot of money for a more dignified, more useful and often less-abusive status, given the role which citizenship plays in our lives, as Milanovic, *inter many alia*, shows in [his work](#). Citizenship is an effective legal tool of [harsh arbitrary punishment and exclusion](#) – and the particular mode of its acquisition cannot possibly alter its essence.

According to the [2019 Report](#) of the European Commission, in the EU alone direct citizenship by investment is available in Bulgaria, Cyprus, Malta and potentially other Member States. As for residence, Bulgaria, Cyprus, the Czech Republic, Estonia, Greece, Spain, France, Croatia, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, the Netherlands, Poland, Portugal, Romania and Slovakia offer (permanent) residence statuses for investment, which are often convertible into the citizenship of those Member States. In short, investment migration is practiced by the absolute majority of the EU’s Member States. Notwithstanding that the “[political Commission](#)” [got the law wrong](#) in the same Report (which, consequently, resulted in no legal change in investment migration landscape in the EU), a bare summary of the facts is there: “Fortress Europe”, next to the US, Canada, the UK, Turkey and the Caribbean, is a world-leading example of this type of marketised sovereignty (though others abound, from Jordan to Vanuatu and Moldova). Given the randomness of citizenship distribution, which I described in detail in a little [MIT Press monograph](#) (translated [into Russian](#), as well as that other language of the global plutocracy – [Italian](#)), opposing any particular route to naturalisation would be pure [hypocrisy](#), just as is [citizenship itself](#). And there are, of course, enough hypocrites.

What political opponents of particular types of naturalisation cannot ignore – even if they are not (very good) lawyers – is that investment naturalisation and residence falls squarely within the realm of what is legal worldwide and in the EU. From Hans Ulrich [Jessurun d’Olivera](#) to [Jo Shaw](#) and [Daniel Sarmiento](#) the consensus is well articulated. In the EU it is confirmed unequivocally by the case-law of the Court of Justice, from [Micheletti](#) and [Zhu & Chen](#) to [Tjebbes](#): if a Member State wants an investment migration programme, it can have one: the division of competences is crystal-clear. Even those in the European Parliament who dislike the practice are clear about where the competence lies (at [point 6](#)).

When the newly-elected Maltese government was selectively attacked in 2014 by (then) [Vice President Reding](#) and the European Parliament for its plans to join the dozen other Member States in the investment migration business, I was honoured to provide them with legal advice at their invitation. [EU Citizenship and Federalism](#) is my core expertise and fending off misrepresentations of the law

by politicians is what lawyers do. Both issues motivating my engagement were totally uncontroversial. Member States may decide who their citizens are, a position unsurprisingly defended by the Dutch government (question 12). Without the people there can be no statehood in fact, as Jessurun d'Oliveira reminds, and while citizens can obviously not be obliged to reside in their country of citizenship – a position equally held by the Dutch government ([question 9](#)) – residence is almost never necessary to become or remain a citizen. Since 2014 Malta has earned almost a billion euros, which is neither a fortune nor an insignificant amount for a micro-state, and in return a number of investors got what Yossi Harpaz calls a '[compensatory citizenship](#)' in the EU, making up for the deficiency of the [low quality legal status](#) they acquired randomly by birth.

Malta is among the recent entrants into a fast growing investment migration industry: dozens of states in Europe capitalise on the huge discrepancies in the quality of citizenships offered around the world combined with the sealed borders of the “West”. The added value of this activity is difficult to overestimate. It offers a financial boost to states (amounting, according to the IMF, to more than [a quarter of GDP](#) in some Caribbean nations). It allows individuals – the losers of the “[birthright lottery](#)” – to get a citizenship associated with at least some rights or even a change of residence.

“The Passport Professor”

The popularity of investment migration world-wide is on the rise: it is a multi-billion-dollar industry with hundreds of players large and small the goings on of which are monitored by the Daily [Investment Migration Insider](#). The industry's self-regulatory body is the [Investment Migration Council](#) (IMC), which I co-founded in 2014. It is a non-for-profit association, which focuses on the best practices investment migration applicable to governments and stakeholders. The IMC has a strong research component. While chairing the association, I founded the IMC [Research Papers](#) series, responsible for the better understanding of the processes underlying contemporary citizenship and naturalisation. The core point of my scholarship has been that citizenships are not equal and are extremely important in all aspects of our lives. It led, *inter alia*, to the publication of the [Quality of Nationality Index](#) (latest edition with Bloomsbury/[Hart, 2020](#)) and numerous other engagements. This is what your “[passport professor](#)” does – the title rooted in the [colourful passport pictures](#) in my books, which *Nieuwsuur* and some Dutch politicians tried to abuse to question my integrity.

I came of age during the “wild 90s” in Russia, when television news was mostly trashy journalism consisting uniquely of political hit-jobs. It was certainly amusing to become the subject of this art form on prime time national television in the Netherlands, my adoptive country of [citizenship](#). My strategy for dealing with the impossibly absurd “passport sales” accusations has been not to engage, which is why this blog post is the only piece I have written on the matter. “Passport trade” is deviant and criminal. The Maltese naturalisation and residence policy is nothing of the kind: it is completely legal and mainstream as any other national naturalization programme operated by any EU Member State. But politically engaged journalism

can create its own reality. So I may have been wrong in not engaging with national television, which omits its homework on even the most basic facts when pushing a narrative, just as I balked at having to offer a serious defence of the value of the Russian language before that independent investigation committee. Is it not obvious that sharing global research in the country of origin is an important part of scholarly work? I thought: those who have read Leo Tolstoy will smile; those who have a vaguest idea of EU law or citizenship will simply switch off the television. I have since learnt that Count Tolstoy might as well not have labored his long life, for the good it would have done those independent investigators, and that the television remains on sometimes, however atrocious.

“Journalism”

Last autumn the Dutch national television news programme *Nieuwsuur* teamed up with several national politicians who dislike investment migration in other countries, but who do not want deprive their own country of its residence by investment [option](#), in order to attack Malta with flagrant disregard for facts or law – Maltese, or European. The first film *Nieuwsuur* broadcast was on “[passport sales](#)” in Malta. Having interviewed a couple of local anti-citizenship-by-investment activists and no one from the government or the investment citizenship world, the journalist knocked on the doors of the new citizens, not finding them home. It is a basic principle of citizenship as a global legal status that no citizen can ever be obliged to reside in the country of nationality (as acknowledged by the Dutch cabinet ([question 9](#))), but this journalist nonetheless felt free to frame the failure of the new Maltese citizens to respond when they absurdly knocked on their doors as “news”. The journalist selectively read the relevant Maltese law in force since 2014, understanding that investment is necessary, but failing to mention due diligence checks and that residence is not required, just as is the case with the *absolute majority* of all the other investment migration programmes in the EU. The Maltese government was accused of legally making money for its people.

The second film was about an unspecified but presumably shady role for the Dutch “passport professor” – me – in the “passport trade”. It used an interview where I explained that the law on EU citizenship, investments, and the division of competences between the Union and the Member States is quite clear, in order to indirectly accuse me of advising one of the 21 EU governments engaged in this practice, and of doing research into this growing field, as well as chairing a relevant professional association. It is like accusing a professor of procurement law of accepting the honour of chairing the procurement law association while writing on procurement.

This would have been an amusing incident – akin to the reporting on my work by [Breitbart](#) or [BizPac Review](#). Indeed, only one Dutch national outlet covered it [professionally](#) so far. But there was a trick. As it turned out, the attack against my work and against EU law on citizenship as such, reflected the political aspirations of Mr Omtzigt – a Dutch MP – and several of his colleagues eager to politicise the issue of investment migration by branding it as the “passport trade”, in an attempt to make it sound illegal, if not criminal. While the media nation-wide paid virtually no

attention, Mr Omtzigt remained persistent. Indeed, Mr Omtzigt felt it appropriate to use his position as a Dutch parliamentarian to try to question Maltese law by way of several rounds of parliamentary questions about the work of a Dutch Professor of European Constitutional Law, addressed to Dutch ministers in full knowledge of the fact that his questions are moot, given that naturalisations in Malta are no more a matter for Dutch ministers than Dutch naturalisations are a matter for the Maltese.

Mr Omtzigt's dedication to the rule of law is commendable, but his complete misunderstanding of EU citizenship law led to parliamentary questions about my work in the "passport trade" resulting in theatrical political attack against scholarly independence, my scientific track-record, as well as the current state of the law as it is accepted by all the Member States of the EU, including the current Dutch cabinet. As a result, for several months "the Passport Professor" emerged as a staple of parliamentary questions in the Netherlands.

- On 26 September 2019 (the day of a prime-time "news" report concerning a law which was five years old at the time) the questions were about "[the sales of passports in Malta and the side-jobs of Professor Kochenov of the University of Groningen](#)" directly equating "investment migration" and "passport sales".
- On 1 October 2019 other MPs followed up with questions on "[the announced investigation of Prof. Kochenov, also called 'the passport professor'](#)", starting immediately with the "passport trade in the European Union (EU)".
- Questions on "[Passport trade on Malta](#)" followed on 2 October with question 19, again, dedicated to my humble person.
- On 25 November 2019 the MPs wrote to the Minister again, this time concerning the "[active promotion of the controversial passport professor by the University of Groningen](#)", outraged by the fact that the University had retweeted some media coverage of my academic work on citizenship.
- In a desperate bid for more attention, on 23 December 2019, Mr Omtzigt was back with questions on the "[Investigation of the side-jobs of Professor Kochenov of the University of Groningen](#)".
- On 30 December 2019, Mr Omtzigt and others were back to ask the Ministers "[Is this true that Professor Kochenov still in November was present at a gala of the passport-firm Henley and Partners?](#)" referring to a conference presentation I had given in London a month before, launching a [dataset](#) behind a book I co-edited.
- On 8 May 2020 Mr. Omtzigt and others were back with the questions on the "[Investigation of additional activities of Prof. Kochenov of Groningen University \(RUG\) and his role in the promotion of the sale of passports](#)" wondering "Has Mr Kochenov given more advice concerning the sales of passports between September 2019 and now?"

Considering the above, it might be clear why such flattering parliamentary attention to a humble citizen, (especially a naturalised one, especially in the absence of the subject for which such attention is being granted) unquestionably felt like bullying from my point of view. I can think of no other law professor in Europe subjected to this type of intense "questioning" by the members of a national Parliament for doing

his job: speaking at conferences, publishing books, and giving impeccable legal advice, which resulted in no court cases lost.

Of course I fully realise that this is how politics works, however absurd and dirty – and kudos for the persistence! The reasons for asking these useless questions can be completely understood from the journalism surrounding them – and here, even knowing that the Dutch *NOS* is hardly your BBC, one could expect a somewhat better job. Mr Omtzigt found an ally in *Nieuwsuur*, ready to report pruriently on an imagined “passport trade”, thus giving preference to advancing particular political aspirations over the law and over the facts. *Nieuwsuur* used my willingness to summarise the law in a prior interview and my general prominence in the field of EU citizenship as a pretext to give public airtime to the Quichotic tilting of Mr Omtzigt and his friends against a particular type of naturalization in a foreign country.

Nieuwsuur and Mr Omtzigt hijacked the “passport professor” title to create an overall evil framing of my expertise as an allusion to potentially criminal “passport trade” to their mutual benefit, and establishing a vicious cycle of nonsense. Mr Omtzigt would purportedly rely on the television report to ask his parliamentary questions about non-existent Maltese “passport trade” by the “passport professor”, and *Nieuwsuur* would then report on the questions asked. Answers would come – and *Nieuwsuur* would report on them too. This produced a classic example of a journalist-MP dog and pony show (which even won a [local prize](#)) trying to make news and law and failing at both: in response to their more than 10 acts until now, including films on prime-time television, only two national newspapers have reacted (none of the two leading ones) and EU law has not changed.

The parliamentary questions about Prof. Kochenov received the most amusing coverage, including news stories alluding to spying, corruption and all kinds of shady business, but never mentioning which law was being broken, such as [“What Is the Role of the Dutch Professor in Questionable Passport Trade”](#), or [“The Parliament Is Worried about the Investigation into the ‘Passport Professor’ Kochenov”](#) reporting on the questions asked by MPs about the University “promoting a questionable research project of Kochenov”, i.e. retweeting global media coverage of my work was [“Passport Trade: Disappointment with the Groningen Professor Grows in the Hague”](#). Then came discussion of corruption and spying in the context of reporting on the questions asked by MPs regarding a conference talk I have given, reporting on a new [book](#) now published by Bloomsbury in Oxford. The answers were discussed in [‘Cabinet Understands Little Concerning Groningen Professor’s Trip to a Passport Conference’](#). In fact – who is the Minister to understand my work? Is the Minister a citizenship scholar? What role does the Minister play in setting a professor’s research agenda or conferencing schedule? The absurdity of the parliamentary questions was thus only matched by the outright stupidity of their reporting: “the professor of citizenship talked at a conference about citizenship about a recent book on citizenship”, all amplified by their constancy and persistency.

Ironically, the law which Mr Omtzigt is politically alarmed about, is not his to change, no matter how much public attention he would summon: a Dutch national politician is nowhere nearly able to alter EU rules on competence over naturalisations, especially ones supported by his own government (question 12) – and investment migration

in Europe is flourishing. The Maltese can change the law at any point and it is their right – not Omtzigt's or the EU's. The political attack I experienced was thus not only unmerited but also devoid of any purpose: the division of competences in the EU, on which I gave scientific advice, remains the same.

Being trolled on prime time national television is a token of recognition almost as satisfying as having a cookie named after me in the [Groningen café](#) where I meet with graduate students, or the well-deserved “passport professor” title. What else can one expect, when researching ‘[The Dark Side of Citizenship](#)’? And the independent investigation committee appointed to hunt the Snark full-time for months is a glorious study on the human condition, especially so when the ghost of the Snark is feared to haunt the language of Pushkin. The question remains, however, is Russian really less academic than Dutch?

*They sought it with thimbles, they sought it with care;
They pursued it with forks and hope;
They threatened its life with a railway-share;
They charmed it with smiles and soap.*

A previous version of this post did not contain the information about the above-mentioned journalism prize, VB

